

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL).

March 15, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated January 26, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I have been speaking to PERSON from the Illinois Department of Revenue regarding a sales tax question. She feels that page 13 of ST-19 Retailer's Tax Booklet applies to my situation, but suggested I write to you to get an answer in writing.

We are in the business of Servicing, Selling and Renting Audio Visual products. Some of our customer are other Audio Visual Dealers who purchase items from us that they cannot get directly from the manufacturers. In those cases we do not charge them sales tax because we have a current resale certificate on file for them. However, if we repair a piece of equipment for them which belongs to one of their customers, we do charge sales tax on any parts we install.

This is were the question comes in to play. These dealers claim that they should not have to pay sales tax to us because they charge sales tax to their customers.

The reason we charge this tax on parts is because the last two times we were audited by the Illinois Department of Revenue, the auditors told us we had to charge tax on parts to other dealers. Their explanation for this was that they(the auditors) do not know if the Dealer we sold to was charging tax to their customers or if they were combining parts and labor and not charging sales tax on the parts.

I feel that according to page 13 of ST-19 Retailer's Tax Booklet we should qualify as a Primary serviceperson and the Dealers we sell to should qualify as Secondary servicepersons. In that case, we would not have to charge them sales tax on parts installed in repairs.

I am asking you to verify if we qualify for this and if so what do we need to get from the Dealers we sell to so that we can stop charging

this tax to them. Or if you feel we do not qualify for this, I would appreciate a letter explaining why so I can give copies to Dealers who complain or refuse to pay the tax.

Let me know if you have any questions.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis, if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

De minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act may use the final method of determining tax liability. Servicemen may qualify as de minimis, if they determine that their

annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

The fact pattern set out in your letter indicates you are performing a repair job "farmed out" by another repairman. In this instance, a relatively complicated multi-service situation exists. A primary serviceman is a serviceman who "farms out" his service to another secondary serviceman. Primary servicemen who act as de minimis servicemen owe tax on their cost price. In multi-service situations, the primary servicemen's cost price is determined either by separately stated selling prices of the tangible personal property transferred, or if the secondary servicemen do not separately state the cost of goods, it is presumed that the primary servicemen's cost price is 50% of the secondary servicemen's total charges. See the enclosed copies of 86 Ill. Adm. Code 140.145 and 140.301.

If the primary and secondary servicemen are both registered, the primary servicemen may give Certificates of Resale to the registered secondary servicemen for any tangible personal property purchased. The primary servicemen would then remit Service Occupation Tax upon either their cost price or upon the separately stated selling price of the tangible personal property transferred, or if not separately stated, then on 50% of service bills to customers.

If primary servicemen are registered and de minimis, they may choose to remit Service Occupation Tax to the Department based upon their cost price of tangible personal property purchased from secondary servicemen. If the cost price of the tangible personal property is not separately stated by the secondary serviceman, the cost price will be deemed to be 50% of the total bill from the secondary serviceman. Primary servicemen provide the secondary servicemen with Certificates of Resale if the secondary servicemen are registered, and collect Service Use Tax from customers on their cost price.

Recent legislation has been enacted that provides for multi-service situations that involve unregistered de minimis servicemen. Public Act 89-675, effective August 14, 1996, states that if an unregistered de minimis serviceman subcontracts service work to an unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman. This certification option is only available in multi-service situations when both the primary and secondary servicemen are unregistered and de minimis, 35 ILCS 110/2 and 115/2.

Please note that if persons purchase tangible personal property in Illinois for resale, and not for use or consumption, the purchasers can obtain that property without incurring tax by providing their suppliers with Certificates of

Resale. Certificates of Resale are valid if they contain the information set out in the enclosed copy of 86 Ill. Adm. Code 130.1405. Persons may also provide blanket Certificates of Resale which are valid if they conform to the requirements of Section 130.1405.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.